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A Critical Appreciaton Of Hudood Ordinances In Pakistan

Basharat Ullah[1], Iltaf Khan[2], Ibrar Hussain[3], Soubia[4], Muhammad Salis[5]

[1]Subject Specialist (Pakistan Studies) Elementary & Secondary Education Khyber Pakhtunkhwa, Pakistan.
[2]Subject Specialist in Pakistan Study, Elementary & Secondary Education Khyber Pakhtunkhwa, Pakistan.
[3]Lecturer at Government College of Management Sciences Jamrud District Khyber, Khyber Pakhtunkhwa,Pakistan.
[4]Lecturer, Department of Pakistan Studies, Hazara University Mansehra, Khyber Pakhtunkhwa, Pakistan
[5]Subject Specialist (Pakistan Studies) Elementary & Secondary Education Khyber Pakhtunkhwa, Pakistan.

Abstract

In this research article, some shortcomings in the original text of Hudood Ordinances in Pakistan have been pointed out. Moreover, the researchers have also made suggestions for the improvement of Hudood Ordinances in Pakistan. The study investigated that the real flaw of the Hudood Ordinances in Pakistan is that these laws have been enacted strictly according to the view of Hanafi jurisprudence and neglected the views and opinions of non-Hanafi jurists. It sometimes, results in the removal of the Hadd punishment. Hudood laws can be brought closer to the current situation by the views of non-Hanafi jurists and ijtihad as well. Therefore, the opinions of other jurists should also be taken into consideration while formulating Hudood laws.

KEYWORDS: Ehsan-i-Rajm, zina liable to tazir, Harrabah (Armed Robbery), Circumstantial Evidence

Introduction

The laws given by Allah and His Messenger (ﷺ) are so sacred that there is no room for objection to them, but when these laws are given the form of a written law, it is a human effort in which mistakes are likely to occur. Drafting the law is a very delicate process. It involves imagining every possible situation and covering it in words, and obviously every human intellect, due to its limitations, is sometimes, unable to cover every situation and thus the weaknesses in the draft law are possible. The Hudood Ordinances are of no exception. There may be errors in the drafting; there may be some things that can be corrected. And as long as there is no change in the command of Allah and His Messenger, the process of correction can always continue. And it should continue as long as it is not the result of any obstinacy.

Therefore, Hudood Ordinances have been objectively reviewed in the following lines:

Ehsan-i-Rajm in the views of Islamic Jurists

It has been stated in Article 5 (2) of The Offence of Zina Ordinance that if a person commits adultery (zina) as mentioned under article 4, he (In Legal language, He is used for both male and female) will be stoned to death in case he is Muhsan(محصن) (married), and if he is not a Muhsan, he will receive hundred lashes. Article 2 (d) of the same ordinance defines Muhsan as anyone who has come of age (and is not demented) has copulated with an adult Muslim woman during his marriage with that woman (Siddique, n.d.).

According to the definition given in article 2 (d) of the mentioned ordinance, a Muslim man who has married a non-Muslim woman i.e. woman of the book (Jews, Christians) cannot be a Muhsan, because for him, to become a Muhsan, marriage with an adult Muslim woman is necessary. Likewise, any non-Muslim woman (woman of the book) cannot be a Muhsan, though she might be the wife of a Muslim man. Therefore, according to this article, they cannot be

given the sentence of stoning to death (Rajm), although they would receive 100 lashes in case they commit adultery.

(احصان)Ehsan should be seen in the lights of interpretations of Muslim Jurists (Fuqaha).

The literal meaning of Ehsan is the protection of something. In Arabic language Hassaan (حصان) is that woman who protects her chastity. In the Holy Quran, the word Al-Muhsanat (المحصنات) has been used in the following three meaning:

- Married women
- Free women
- Chaste women

i. "And wedded women are forbidden unto you" (Surah Al-Nisa, 24).
ii. "And those among you who are unable to betroth free Muslim women, they should betroth the Muslim slave women whom you own" (Surah Al-Nisa, 25).
iii. "Undoubtedly, curse be upon them who calumniate unknowing pious faithful women in this world and in after life, and there is great punishment for them in after life" (Surah Al-Mominon, 23:24).

Ehsan-i-Rajm (احصان رجم) is the combination of the prior conditions that if found in an adulterer, is liable to be stoned to death. In total, there are seven conditions. They are called components of Ehsan-i-Rajm, which are necessary to entail the sentence of Rajm. They are as under:

- Adulterer must be free;
- He/She must be sane;
- He/She must be adult;
- He/She must be Muslim;
- Should have betrothed a Muslim woman;
- Should have consummated his copulation with her;
- Both the spouses should have been qualified with the attribute of Ehsan (Ehsan ki halat me zina karny par rajm ki saza murattab huny waly shuroot, n.d.).

Imam Abu Hanifa declares Islam to be a condition of Ehsan. Therefore, an infidel will not be a Muhsan. And according to Imam Abu Hanifa a non-combatant non Muslim women (Christian, Jew) cannot make a Muslim man Muhsan. Hence, when Kaab bin Malik desired to wed a Jewish woman, the Holy Prophet (SAW) forbade him from this act and said; "She will not make you Muhsan" but Ibn Adi regards this Prophetic (ﷺ) saying as weak in credibility.

Therefore, according to Imam Abu Hanifa, a Muslim who married woman of book would not be stoned to death in case he has committed adultery, because Imam abu Hanifa does not regard him as Muhsan. The reason being The woman of book does not make a Muslim man Muhsan (Wizarat-i-Auqaf-o-Islami umoor Kuwait, 2009).

Imam Shafai, Imam Ahmad and Imam Abu Yousuf do not regard being a Muslim as a condition of Ehsan-i-Rajm. They argue that the Jews came to the Prophet (ﷺ) and said that two of us, a man and a woman, have committed adultery. They were both stoned to death by the order of the Holy Prophet (SAW).

Furthermore, they have the opinion that if a Muslim marries a woman of the Book (Christian or Jew) then both of them will be Muhsan. The argument in favor of the assertion of the previously imams is that according to the Holy Quran, chaste Jewish and Christian women are also declared Muhsanat. Quran says;

"Today pure things have been allowed to you, and the meal of the people of the book is allowed to you, and your meal is allowed to them. And chaste Muslim women and chaste women of those people who had been given book before you are allowed to you, while you betroth them, give them their bridal money (Mahar)" (The Quran, 5:5).

Imam Malik also agrees with the majority of Islamic jurists (Imam Shafai, Imam Ahmad, Imam Yousuf) that marriage with a woman of book makes a Muslim man Muhsan, thereby qualifying him for the punishment of Rajm (stoning to death) in case of adultery.

The outcome of the foregoing debate is that the view of the majority of the Islamic jurists (Jamhoor Fuqaha) should be preferred in this regard. Hence, if a Muslim man marries a non-Muslim woman (Christian, Jew), will be stoned to death if they commit adultery (zina) because both are Muhsan in their view.

Zina liable to Tazir

Under section 10 (1) of the The Offence of Zina Ordinance, a person who commits adultery or forcible adultery (zina bil jabr) for which there is no evidence of any kind mentioned in section 8 of the same ordinance, will be liable to Tazir (Siddique, n.d.).

It is stated in this section that if the evidence of adultery against a person mentioned in section 8 (which is the confession of the culprit or four male eyewitnesses) is not available, for example, if the number of witnesses is less than four, then in that case, no hadd will be imposed on the adulterer, but the court will punish him as Tazir.

Subsections 2, 3 and 4 of the same section provide for Taziri punishments, which is up to 10 years imprisonment, 30 lashes and a fine for zina liable to tazir. A minimum of 4 years and a maximum of 25 years imprisonment and 30 lashes for zina bil jabr (Rape) has been declared. However, if the number of people who commit rape is more than one, such people will be sentenced to death. The said section 10 and its sub-sections have been removed from the The Offence of Zina Ordinance through the Protection of Women Act 2006 and added into the section 496B under Pakistan Penal Code.

Here few points on just zina lible to tazir are going to be discussed.

The first point is that if less than four witnesses testify to adultery, can the accused be liable to tazir? The general opinion of the jurists has been that in the case of less than four witnesses, the accused cannot be punished, and in this case the witnesses themselves will be liable to hadd-i-Qazf i.e. eighty lashes due to false accusation of adultery. However, some indications suggest that a penalty (tazir) may be imposed on the accused of the adultery in such a case. For example, according to one tradition, punishment will be given in a case where three out of four witnesses testified to adultery, while the fourth witness said only that he had seen the accused man and the accused woman in the same clothe. So, Ali (RA) imposed hadd-i-Qazf on the three witnesses for not fulfilling the testimony, but at the same time, he punished (tazir) the accused man and the accused woman as well (Nasir, 2008).

However, in the case of proof of adultery, the real wisdom of the strict standard set out by the Shariah has to be taken into account. Therefore, the opinion of the majority of jurists has to be accepted and the order to call four witnesses to prove adultery requires it in terms of its purpose and wisdom. In the case of less than four witnesses, the accused should be considered legally innocent. Umar's (RA) conduct in such cases has been that if one of the four witnesses would not testify to adultery clearly, he would have flogged the other witnesses (hadd-i-Qazf) and acquitted the accused.

The second point is that whether the testimony of four witnesses is required for a crime less than adultery, such as kissing or a suspicious gathering of a stranger man and woman in private, or a taziri punishment may be given to the accused if they are found guilty according to the general standards of evidence? There is no formal explanation in the jurisprudential collection in this regard, but it seems that the jurists did not require four witnesses in this case.

However, some of the practices of the Companions (RA) are noteworthy in this regard:

1. A man found his wife with a man who had closed the doors and hung curtains. So Umar (RA) flogged them both hundred times.
2. After Isha, a man was found wrapped in a mat in another man's house and Umar (RA) flogged him hundred times
3. A man and a woman were brought to Ibn Masood (RA) who were found in a quilt. He flogged them both forty times and humiliated them in front of

the people. Umar (RA) praised his decision.

4. There is a narration about Ali (RA) that if a man and a woman were found in the same clothe, they would both be flogged hundreds of times (Nasir, 2008).

Apparently, four witnesses were not called in all these cases, from which it can be deduced that in this case, if crime less than adultery has been proved by the general standards of evidence, taziri punishment can be given. However, it is important to note here that punishment in these cases may have been decided on the basis of the conviction or tacit confession of the perpetrators themselves, as traditions seem to suggest that the perpetrators may not have denied their guilt by seeing the strength of the circumstantial evidences (Qarain).

It is pertinent to note here that the real wisdom for imposing strict conditions of four eye witnesses to prove adultery is to cover the guilt of the offender, save him from disgrace and give him a chance to repent and reform. However, if a couple is involved in such activities or a specific area is becoming the center of such activities, then obviously the attitude of pardon or covering up the crime committed in solitude will not be adopted here and in that case, insisting on four witnesses to prove a crime less than adultery would be completely futile.

The summary of the above discussion is that according to the majority of jurists, if a crime of consensual adultery (zina bil raza) is not proved on the basis of evidence (i.e. four male eye witnesses or confession of the culprit), the couple will be considered legally innocent and will not be punished (tazir) on the basis of fewer witnesses. However, less than adultery, such as kissing or lying down together in a suspicious manner, the condition of four witnesses is not found in the relics of the Companions of the Prophet S.A.W. For that reason the court may give taziri punishment to the couple involved in that crime.

Sodomy (Liwatat)

According to the article 5 (1) of The Offence of Zina Ordinance, zina liable to hadd has been defined as;

"If it is committed by a man, who is an adult and is not insane, with a woman to whom he is not, and does not suspect himself to married;" or

"It is committed by a woman who is an adult and is not insane with a man to whom she is not, and does not suspect herself to be married" (Siddique, n.d.).

According to this definition, sexual intercourse between a man and a woman is a zina entailing hadd, which stoning to death for a Muhsan and hundred lashes for non-Muhsan, while sodomy is not a crime entailing hadd according the abovementioned definition of zina.

Let us see the views of the Islamic Jurists regarding sodomy (liwatat).

The term sodomy is used for the anal sexual intercourse between a man and woman or between man and a man (Martin, 1997 & Aziz, n.d.).

The jurists are unanimous in their views that sodomy is unlawful and is the worst form of licentiousness and obscenity. Allah has condemned this act in the Holy Quran and declares this act as indecent. Allah says:

"And we also sent Lot (A.S) while he said to his nation that why do you commit such act of indecency that no one in the entire world had committed before you. You leave women and intercourse with men. On the contrary, you are transgressors" (Surah Al-Aaraf: 80).

At another place, it is written; "among the inhabitants of the entire world, you commit the act in which you indulge in sexual intercourse with men. And your creator has created wives for you. You leave them. The point is that you are the transgressors" (Surah Al-Shora: 165).

The Holy Prophet (ﷺ) has condemned this act in these words, "Curse of Allah be upon him who commits the act of the nation of Lot (AS), Curse of Allah be upon him who commits the act

of the nation of Lot (AS), Curse of Allah be upon him who commits the act of the nation of Lot (AS).

Majority of the jurists agree that sodomy entails the same punishment as zina (adultery). The married one should be stoned to death and the non-married one should be lashed and expatriated from the city. There argument is that in the Quran, zina (adultery) and sodomy both have been declared as indecency. Allah Says:

"And dont even go near zina (adultery), undoubtedly that is indecency in a high degree" (Surah Bani Israil: 32).

At another place, Allah Says:

"Why do you commit such act (sodomy) of indecency" (The Quran).

In the above two verses, both adultery (zina) and sodomy (liwatat) are declared as indecency.

In the tradition of Abu Musa R.A, the Holy Prophet (peace be upon him) says: If two men commit sexual intercourse both are adulterers. In this regard, there is no difference of opinion among the jurists.

According to Imam Abu Hanifa, sodomy does not entail the punishment of hadd. According to Imam Abu Yousuf and Imam Muhammad, Sodomy is like adultery. Non married one will be lashed and the married one will be stoned to death. According to Maliki sect, both active sodomites will be stoned to death whether they are married or non-married. However, their being willful participants in this act is a condition for their being stoned to death. Their being Muslims or free is not a condition.

According to Shafai sect, sodomy entails Hadd-i-zina. There is a Prophetic (ﷺ) saying, "If you find two men committing the act of the nation of Lot (AS), kill both the subject and the object". The Hanabila are of the view that hadd of sodomy for the subject and object is like the punishment of hadd for zina (adultery) (Iqbal, 2020).

Public declaration (confession by the accuser) or the testimony of four witnesses is the proof of sodomy, according to the view of majority of the jurists. Moreover, if a man says about another man that he has committed sodomy, it will be regarded as a false accusation and will entail hadd-i-Qazf.

The gist of this detailed discussion is that according to the view of the majority of jurists, sodomy should be regarded as a crime entailing hadd, and it should be included in the The Offence of Zina Ordinance.

Today sodomy is very prevalent in our society and everyday cases of sodomy come forth. It is inevitable for the prevention of this crime that sodomy should be included in the list of crimes punishable by hadd.

Procedure of stoning to death

Section 17 of the The Offence of Zina Ordinance describes the procedure for stoning, stating that witnesses to the perpetrator of the adultery will start throwing stones and then he will be shot to death. At the same time the process of stoning will be stopped (Siddique, n.d.).

This method of stoning mentioned in The Offence of Zina Ordinance is against the principles of Islamic jurisprudence. The crime of adultery will be proved either by confession or by the testimony of four witnesses. If the adultery is proved by confession but the culprit backs out from his confession, the hadd will be waived or if he runs away during stoning, he will not be caught. It is narrated from Abu Hurairah (RA) that Ma'az bin Malik Aslami came to the Messenger of Allah (ﷺ) and said: O Messenger of Allah! I have committed adultery. He (ﷺ) turned away from him. He came from the left and said: O Messenger of Allah! I have committed zina, until he confessed four times before him (ﷺ). The Prophet (peace upon him) said: Take him and stone him. People took him to be stoned. When he was hit by a stone, he turned his back and ran away. A man came in front of him with a camel's jaw bone in his hand and killed him. When the Holy Prophet (ﷺ) was told that he had run away after being hit by a stone, so he (ﷺ) said: Then why did you not leave him to go? (Sahih Muslim, Book 17: The Book Pertaining to Punishments Prescribed by Islam (Kitab Al-Hudood), n.d.)

And if the crime of adultery is proved by the testimony of four witnesses, but the witnesses refuse to throw stones, the hadd will also be waived and the hadd of qazf will be imposed on the witnesses.

Therefore, the wisdom of starting with stone and then shot him to death is beyond comprehension. Therefore, the procedure for stoning given in the Hudood Ordinances, is not in accordance with Islamic principles, so there is room for amendment (Shariah Academy, 2020).

Definition of Qazf

Section 3 of The Offence of Qazf Ordinance defines qazf as a person who deliberately accuses another person of adultery, whether by word of mouth or by gestures. But at the same time, exceptions have been made that slander which is in the public interest, and in the best interest of the people and society, or an allegation made in good faith. Such a person will not be considered to commit qazf and these exceptions can be helpful in acquitting him of qazf (Siddique, n.d.).

The definition of qazf given above is not based on Islamic principles, but has been taken from English law which is provided in section 499 of Pakistan Penal Code. The same definition is affixed here. In the light of Islamic jurisprudence, an accusation of adultery should be made against someone with good intentions or with bad intentions, it will be called qazf because slander is a dangerous crime for society as well as according to Islamic law. Because this false accusation can result death penalty for both men and women if they are Muhsan, and in case of whipping for non Muhsan, it is a matter of honor and disgrace. According to the verse No. 4 of Surah Al-Noor, anyone who accuses a chaste person of adultery will be found guilty of slander. If the accuser brings four witnesses, the hadd will be imposed on the adulterer and if not, the hadd will be imposed on the liar (false accuser of adultery).

Therefore, the definition of qazf in the The Offence of Qazf Ordinance should be in accordance with Islamic principles and it is necessary to remove the exceptions. This law can be made effective only when a person shall present four witnesses for accusing another person of adultery with any intention. Otherwise, he should remain silent and cover it up (Shariah Academy, 2020).

Therefore, the definition of qazf needs to be based on Islamic principles. It will become an effective law only if it is made a pure Shariah slander by eliminating the exceptions (good intentions and public interest).

Hirz (protected property)

Article 5 of the The Offences against Property Ordinance defines theft entailing hadd as:

"Any adult who secretly steals property worth the minimum prescribed limit (Nisab) i.e. 4.457 grams of gold (mentioned in article 6) or more than that amount from an enclosed place (Hirz), on the condition that is not already stolen property, would be regarded as having committed theft, the culprit being aware of the fact the property be equal in worth or more than the minimum prescribed limit (Nisab), the bindings of the said ordinance would regard that person of having committed theft entailing hadd" (Siddique, n.d.).

Section 2(b) defines Hirz (an enclosed place) as a place where arrangements have been made for the protection of property.

It is obvious that by theft itis meant taking something secretly from the property of a man or community (nation). It should be made clear that that act of theft shouldnt be termed by someone as mere picking up something from the ground.

The enclosed/protected place (Hirz) can be of various kinds. For example, the Holy Prophet (ﷺ) said about fruit, "if any one commits theft from a heap of fruits amounting of a shield[1]

[1]. It is worth mentioning that while the above stated Prophetic saying names the shield while article 6 of the ordinance determines 4.457 grams of gold or property having the same worth as the minimum prescribed limit for theft entailing hadd.

Nowadays, the shied is practically in desuetude but the prices of the various protective arms of warfare as alternative of the shield of the bygone era are different in different places. Therefore, the minimum protective price of such protective armament may be kept in view.

(Salam, 1986), his hand should be amputated". Now it is obvious that from desiccating of corn and fruit, pen ground without walls and doors would be utilized. The Holy Prophet (ﷺ) mandated the amputation of hand for theft.

Likewise, the Holy Prophet (ﷺ) said about goats that in the pens if the goats are stolen this theft would qualify the thief for the amputation of hand. The pens of goats may be having walls or fences or may in open places without walls or fences where goats are tethered. A locked structure is not a condition for a place to be declared a pen (Salam, 1986).

The gist of the discussion is that the definition of Hirz (protected place) is incomplete in the ordinance and the exclusion of many places from hadd has created loopholes for larceners to evade hadd.

Theft of guest from his host house

According to the article 10(c) of the same ordinance if a guest commits theft from the house of his host, his hand would not be amputated. The reason presented in favour of this is that the guest has been allowed to enter the house; therefore, that house would not be regarded as Hirz (protected place) for him. The second reason presented is that the guest is like occupants of the home; therefore, his act is breach of trust/embezzlement does not qualify for the amputation of hand (Salam, 1986).

Due to these two reasons the theft committed by an invited guest is not admitted as theft entailing hadd. The deactivation of hadd punishment because of the above mentioned reasons contravenes the injunctions of the Holy Quran and Prophetic (ﷺ) traditions. In the Prophetic (ﷺ) traditions, we find proofs of amputation of hand for theft from an open unprotected place. Hazrat Abdullah bin Umar (R.A) says that the hand of a man was amputated by the order of the Holy Prophet (ﷺ) with the reason that the larcener had stolen a shield from a platform for learning of women. The shield was worth three dirhams.

The Prophetic (ﷺ) tradition proves that the amputation of hand was mandated on theft from an open and unprotected place. Secondly, if someone is allowed entrance in a house, it does not mean he has been given the license to steal. To declare a guest as being similar to his host or the occupants of the house is also wrong because the chief of the household does not entrust all of his household items to the guest. On the contrary, he is allowed only to use certain household items. At the most, the thing he is entrusted with may be regarded as trust. For example, bed, utensils etc. the possessions of the host i.e. items in closed cupboards are not the things entrusted to the guest.

To conclude the discussion, the committal of the theft by a guest from the house of his host should be declared larceny punishable by hadd. The Holy Quran and the Prophetic (ﷺ) traditions uphold this sentence.

Definition of Harrabah (Armed Robbery)

Article 15 of The Offences Against Property Ordinance defines Harrabah as: when a person or more persons, whether armed or unarmed, use force to steal the property of some person, attack him or use undue resistance or threaten to kill or harm him or intimidate him; the ransackers would be guilty of committing the crime of harrabah.

We deduce from the foregoing discussion that those bygone eras shield was not only an item of defense as it was regarded as a guarantee for the defense of ones life, but also an item of decoration and pride. Therefore, the determination of minimum prescribed limit (*Nisab*) would be ascertained accordingly, the lowest price of which should then be the basis for the *Nisab*.

We should not think that that ancient value of *Dirhams* or *Dinars* should be the criterion for modern *nisab*. The vagaries and ups and downs in the prices of currencies should be kept in view while determining *nisab*. Accordingly, the precious metal gold is a common criterion or standard for *nisab*.

The determination of *nisab* on the basis of gold is possible. Therefore, the government has viewed the precious thing as the basis for the determination of *nisab*. Likewise, the nisab for theft is determined as 4.457 grams of gold (i.e. ¼ of tola). The determination of *nisab* for various areas may be different from one another, and in some places some other precious things may be declared the standard for *nisab*. Accordingly the principle should be kept in view that as the value of *Deat* (blood money) is determined year by year, the same should be the case with *nisab* of theft. For this purpose the authoritative interpretation of the Islamic law by Scholars is necessary.

The Holy Quran has described the limitations of Harrabah in verse No. 33 of Surah Al Maidah, in the following words:

"Those people who fight Allah and his Prophet (ﷺ) and are always on rampage in the earth for the sake of mischief, their punishment is simply this they should be killed or their hands and legs should be amputated in opposite directions or they should be exiled. This is their infamy in this world and there is great punishment reserved for them in the afterlife" (Surah Al-Maidah:33).

According to the tradition of Ibn-i-Abbass (R.A) the Holy Prophet (ﷺ) says: "if the ransackers kill and despoil, they should be killed and gibbeted. When they kill and dont despoil, they should be killed and not to be gibbeted. And when they despoil and do not kill, their hands and legs should be amputated. If the ransackers do not despoil and merely intimidate, they should be exiled[2] (Wizarat-i-Auqaf-o-Islami umoor Kuwait, 2009).

The above described verse of the Holy Quran categorizes the accused of Harraba as:

i. Those people who fight Allah and his Prophet (ﷺ).
ii. Mischief-mongers in the earth

Mischief-mongers are of two kinds, those who qualify for the penalty of death, and those whose punishment is the ordinary penal code.

Imam Taymiah says in his work "Siasat al shariah" that the mischief mongers who qualify for the penalty of death are described below:

i. Spy for another country. Imam Malik endorses this view.
ii. According to Imam Malik, Imam Shafai and Imam Ahmad, Muharib is any person who invents any new custom or usage which is contrary to the teachings of the Holy Quran and Prophetic (ﷺ) traditions (Biddat).
iii. When it be the unanimous decision of the society that the presence of some person will cause disintegration and mischief in the society.
iv. According to Imam Abu Hanifa, any person who habitually arrogates or expropriates people from their properties.
v. Habitual drinker of liquor, who, despite being punished, is unwilling to relinquish drinking. The fear of his mischief would spread and would necessitates his punishment.
vi. A practitioner of magic because of its being the cause of mischief in the society (Taymiah, n.d.).

It is therefore, suggested that the definition of Harrabah should be broadened and subsumed various incidental articles in the compass of these crimes for implementation in the light of the above mentioned scenarios.

Furthermore, the terrorism should also be included in the harrabah category crimes. Indeed, it would eradicate terrorism and like-crimes from our society.

Condition of being Muslim for Hadd-i-Sharb al Khamr

The above definition stipulates that being a Muslim is a condition for the punishment of hadd of the drunkard. If a non-Muslim drinks intoxicant liquor, he will be punished under section 11 as Tazir i.e. imprisonment which may extend to three years or whipping not exceeding thirty stripes, or with both. According to the Hanafis, there is no hadd on non-Muslim citizens of the Islamic State for drinking intoxicating liquor. However, it is narrated from Hassan bin Ziyad (who was a special disciple of Imam Abu Hanifa and was counted among the Companions whose opinion was followed by other jurists) that if a non Muslim drinks alcohol and becomes intoxicated, hadd will be imposed on him because of intoxication, rather than merely drinking. Imam Kasani who is another influential figure of Hanafi school of Sunni jurisprudence, considers this saying as Hassan (well known).

The discussion can be summarized in such a way that hadd punishment for drinking intoxicant liquor is a public law, not a personal

[2] . in the modern era solitary confinement will be regarded as excile.

one; therefore, it may be imposed on both Muslims and non Muslim, as there is a verdict of Hassan bin Ziyad. Because intoxication is the root cause of mischief and can be a precursor to many evils; therefore, it must be remedied.

The Status of the Qarinah (Circumstantial Evidence) in Hudood Laws

The word Qarinah, the plural of which is Qarain is from the Arabic word Qarn which means companionship. According to jurisprudence, in a criminal case, there are some hidden factors which do not seem to indicate the occurrence of the incident, but if these factors are examined, it is possible that in this case, the hidden factors be more reliable (Ahmad, 2019).

According to the jurists, the Qarinah is considered effective in both affirmation and negation. Sometimes the Qarinah is so strong that the matter reaches a degree of certainty about the event which is called Qarinah-e-Qatia(قرینہ قاطعہ). And sometimes, it is so weak that it is rejected as a mere possibility. According to the jurists, there is a lot of evidence and material on the acceptance of the Qarinah. They have the view that according to the Holy Quran itself, the tearing of the back of Yusuf's (AS) shirt has been taken as a reference in his favor and against the woman concerned (Ahmad, 2019).

In Islamic criminal law, Qarinah and other indirect arguments regarding the imposition of the capital sentence (Hudood) are considered ineffective, but a discretionary sentence (Tazir) may be imposed on the basis of the Qarinah. There are different opinions among the jurists in this regard.

One of the Hanbali jurists is known Ibn Al Qayyum al Juziyya, who is convinced to accept the Qarain in all civil and criminal cases. According to him, if a case of theft is filed against the defendant while the stolen property is recovered from his possession, it will be an open evidence of theft against him, on the basis of which he will be subject to the hadd. Regardless of the absence of confession or testimony, the accused may satisfy the court with a reasonable justification for the presence and discovery of the stolen property. Ibn Al Qayyum al Juziyya insists that Qarain only guarantees the universality of divine justice, and this will only be possible when the word "Bayyinah" (clear evidence) is applied including Qarain, to all cases i.e. civil and criminal, be considered effective. Therefore, Maliki jurists, in the case of adultery by the pregnancy of an unmarried woman and the birth of a child by a married woman in less than six months, or vomiting in the case of drinking and discovering the stolen property from a person in case of theft, should be considered enough for the imposition of Hadd penalty (Munzil, 2015).

On the other side, Hanafi jurists are of the opinion that the Qarain are ineffective in hudood punishments. According to the Hanafi jurists, a Qarinah will be ineffective unless it is accompanied by "Bayyinah" (clear evidence). In other words, the Qarinah itself is a supporting argument that increases the court's satisfaction with the occurrence and non-occurrence of the crime. Therefore, people in Madinah were expressing doubts about the arrival and departure of ordinary people in a woman's house. Undoubtedly, this kind of coming and going is a kind of Qarinah that could indicate immorality, but there was no evidence of the real crime. Therefore, the Prophet (ﷺ) said: If I had stoned someone without a "Bayyinah" (clear evidence), I would have stoned this woman.

This means that Qarinah cannot be deemed as proof of adultery unless there is no clear evidence i.e. confession or four male eye witnesses. Although, on the basis of this hadith the jurists consider the Qarinah as a means of affirmation; however, their views are different with regard to the cases of Hudood. But, all the jurists, on the basis of the Qarinah, unanimously consider it permissible to impose Tazir.

If the accused smells of alcohol, or vomits alcohol, or is found intoxicated, then some of Maliki and Hanbali jurists consider all of these conditions to be sufficient for hadd (Munzil, 2015).

On the contrary, Hanafi, Shafai jurists do not consider the above conditions for implementing hadd punishment as they are of the

opinion that there may be other possible explanations for all these disorders.

The same is true of fingerprints recovered from the scene of theft, robbery and murder and other such criminal cases.Francis Galton points out in his book "Fingerprints" that only two people in the world can have the same finger prints. However, this can create suspicion in favor of the accused, due to which the hadd cannot be imposed on him. However, as stated earlier, Tazir can be given. And one of the reasons for this is that the fingerprints of a person in the incident area are not a clear indication that the crime was committed by the same person. For example, finding one's fingerprints on a murder device does not prove that the murder has been done by him because there is a strong possibility that the killer may have committed the murder wearing gloves and the marks on the killing device belong to someone else. The same thing applies to images and video. Therefore, in all the above cases, clear evidence (confession or witnesses) will be required and otherwise, all the above-mentioned investigative cases will be considered as supporting evidence (Ahmad, 2019).

When some of the numerous and varied Qarain in a crime indicate both affirmation and denial of the crime, then the latter will be relied upon to give relief to the accused, because the Holy Prophet (ﷺ) also said: Dismiss the hadd on the basis of suspicion or that the benefit of the doubt be given to the accused. This hadith is the soul of the criminal code. In this regard, this principle of jurisprudence serves as the basis when there is a conflict between the prohibition and the requirement; the prohibition will be considered first.

Muslim jurists consider qarinah to be effective for abortion of the punishment but not for affirmative of the punishment or that a case can be dismissed on the basis of qarinah or that qarinah is effective not in affirmation but in negation. So, if in the presence of witnesses to adultery, the medical report indicates the woman is still virgin, then this report can remove the hadd from the accused as evidence, but on the basis of this, the hadd of qazf cannot be imposed on the witnesses. If qarinah was to be considered for affirmation, then in the above case, the witnesses would be lashed for qazaf (Ahmad, 2019).

Conclusion

In this research, an attempt has been made to review the hudood ordinances in the light of the Quran, Sunnah and the opinion of the jurists so that the provisions of the hudood Ordinances could be amended. The results of our study in this regard are as under:

i. If a non-Muslim woman (woman of the Book i.e. Jew and Christian) is married to a Muslim, then she and her Muslim husband should be considered as Muhsan according to the majority of jurists, to whom the hadd of stoning to death will be applied if they commit adultery.
ii. According to Hudood Ordinances, theft of a guest from his hosts houses is not liable to hadd. The above discussion proves that if a guest steals from the host's house, hadd should be imposed on him, which is in accordance with the Holy Quran and Sunnah.
iii. According to The Prohibition Order being Muslim is a condition for drinking liable to hadd. Drinking is the root cause of many crimes in the society. For the reason, the Verdict of Hassan bin ziyad must be taken into account, which means that if a non Muslim becomes intoxicated by drinking alcohol, he will be liable to hadd.
iv. According to the Islamic jurisprudence, if adultery is proved by confession of the accused or by four Muslim eyewitnesses, the hadd will be imposed. But, if the number of the witnesses is less than four, the accused must be considered innocent. For that reason tazir punishment will not imposed on the accused. However, a crime less than adultery like kissing; lying down together etc. must be punished (tazir) on the basis of general standards of evidence in order to stop vulgarity in the society.
v. Confession or witnesses are required to enforce the hadd punishment. The presence of the Qarinah (circumstantial evidence) may not be sufficient for the enforcement of the hadd. However, the presence of circumstantial evidence may result from

abrogation of hadd punishment. If there are witnesses, but a circumstantial evidence is present on the innocence of the accused, it will create suspicion which will benefit the accused and the accused will be considered innocent.

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